IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 230 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL BABABHAI KALIDAS - Appellant(s)
Versus
PATEL KARSHANBHAI VITHALDAS & 1 - Defendant(s)

==========

Appearance :

MR SAURABHI PATEL FOR MR RC JANI for Appellant(s) : 1,
MS MOHINI BHAVSAR FOR MR BHARAT JANI for Defendant(s) : 1,
None for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/03/2007

ORAL JUDGMENT

1. Mr.Saurabh Patel, under the authority of Mr.R.C. Jani, learned counsel for the appellant and Ms.Mohini Bhavsar,

under the authority of Mr.Bharat Jani, learned counsel for the respondent No.1. None for the respondent No.2 though served.

2. Short facts necessary for disposal of the present appeal are that the plaintiff who was using a part of some public lane, had filed the suit seeking a declaration that the defendants had no right over the property and an injunction to injunct the defendants from interfering with the possession of the plaintiff.

3. The defendants appeared before the court and submitted that the land did not belong to the plaintiff and the land in fact, was belonging to the Government. The learned trial court, after recording the evidence and hearing the parties, held that as the plaintiff was using the land for long, the defendants were not entitled to interfere with the plaintiff's right, it accordingly decreed the suit. The appellate court held that as the plaintiff has failed to prove his ownership over the land in dispute and it is proved that the land belongs to the public authority / Government, no declaration or injunction could be granted in favour of the plaintiff, it accordingly allowed

the appeal and dismissed the suit. Being aggrieved by the judgment and decree passed by the appellate court, the plaintiff is before this Court.

4. The appeal has been admitted for hearing the parties on the following substantial questions of law:-

"Whether on the facts and in the circumstances of the case, the first appellate court had committed substantial error of law in holding that the suit land was not of the ownership of the plaintiff?"

5. Mr.Saurabh Patel, learned counsel for the appellant instead of referring to the question framed by this Court, argued that even if the land did not belong to the plaintiff, he would be entitled to an injunction against the respondents, because, the plaintiff was using the land for many years. He also relied upon an order dtd.8/9/1971 passed by the Gujarat Revenue Tribunal in Appeal No.136 of 1971 holding inter-alia that the land in dispute belonged to Patel Haribhai Jethabhai.

6. On being asked that what is the proof of the ownership of

the plaintiff, Mr.Patel, learned counsel for the appellant submitted that the plaintiff had no documentary title in his favour, nor there is revenue entry in his favour. Placing reliance upon the Single Bench Judgement of this Court in the matter of Parmar Gogaji Kanaji Vs. Parmar Ganeshbhai Motibhai, reported in 1968 GLR 1060, he submits that the open site in front of the house belongs to the owner of the house and no other person has ownership for that portion. In the said judgment, the court was considering that whether adjoining neighbour has a right to interfere with the said ownership which was for a limited purpose. In the said matter, the court did not say that the adjoining owner would have no right to come upon the land which is in front of the house of the plaintiff. If the said judgment is misunderstood to hold that every land in front of the house of an owner would be personal land of such owner, then it will lead to chaotic situation, because, every owner would start raising construction upon such land and would even block the free flow of traffic and cause hindrance in the right of way of others. The judgment is to be understood in its true perspective. If the plaintiff has failed in proving his ownership, then, the question on which the appeal has

been admitted, must be decided against the interest of the appellant.

7. The appeal is dismissed. No costs. Interim relief, if any, is vacated. No costs. Let a decree be framed accordingly.

(R.S. GARG, J.)

rafik